

AMENDED IN SENATE DECEMBER 16, 2009

SENATE BILL

No. 525

Introduced by Senator Padilla

February 27, 2009

~~An act to amend Sections 1343 and 1344 of the Health and Safety Code, relating to health care service plans. An act to add Section 4576 to the Penal Code, relating to correctional facilities.~~

LEGISLATIVE COUNSEL'S DIGEST

~~SB 525, as amended, Padilla. Department of Managed Health Care: rulemaking. Correctional facilities: wireless communication devices.~~

~~Existing law establishes various offenses relating to the unauthorized provision of specified items to persons confined in local and state correctional facilities.~~

~~This bill would provide, subject to exceptions, that any person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the Department of Corrections and Rehabilitation any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module (SIM card) or memory storage device, is guilty of a misdemeanor, punishable by a fine not exceeding \$5,000 for each device. The bill would also provide that if a person visiting an inmate or ward in the custody of the department is found to be in possession of a cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a SIM card or memory storage device, when searched or subjected to a metal detector, as specified, that cellular telephone or wireless communication device or component shall be subject to confiscation. The bill would require posted notices regarding those search and confiscation provisions, as specified.~~

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Director of the Department of Managed Health Care. Existing law authorizes the director, by the adoption of rules or the issuance of orders, to exempt from the act any class of persons or plan contracts if the director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under the act, as specified. Existing law also authorizes the director to waive any requirement of any rule or form in situations where that requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to the act.~~

~~This bill would subject the making of those exemptions and waivers to the administrative rulemaking provisions of the Administrative Procedure Act.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4576 is added to the Penal Code, to read:
2 4576. (a) Except as otherwise authorized by law, or when
3 authorized by the person in charge of the prison or other institution
4 under the jurisdiction of the Department of Corrections and
5 Rehabilitation or by an officer of the institution empowered to give
6 that authorization, and except as provided in subdivision (b), any
7 person who possesses with the intent to deliver, or delivers, to an
8 inmate or ward in the custody of the department any cellular
9 telephone or other wireless communication device or any
10 component thereof, including, but not limited to, a subscriber
11 identity module (SIM card) or memory storage device, is guilty of

1 *a misdemeanor, punishable by a fine not to exceed five thousand*
2 *dollars (\$5,000), for each device.*

3 *(b) If a person visiting an inmate or ward in the custody of the*
4 *department, upon being searched or subjected to a metal detector,*
5 *is found to be in possession of a cellular telephone or other wireless*
6 *communication device or any component thereof, including, but*
7 *not limited to, a SIM card or memory storage device, that device*
8 *or component shall be subject to confiscation. Notice of this*
9 *provision shall be posted in all areas where visitors are searched*
10 *prior to visitation with an inmate or ward in the custody of the*
11 *department.*

12 *SEC. 2. No reimbursement is required by this act pursuant to*
13 *Section 6 of Article XIII B of the California Constitution because*
14 *the only costs that may be incurred by a local agency or school*
15 *district will be incurred because this act creates a new crime or*
16 *infraction, eliminates a crime or infraction, or changes the penalty*
17 *for a crime or infraction, within the meaning of Section 17556 of*
18 *the Government Code, or changes the definition of a crime within*
19 *the meaning of Section 6 of Article XIII B of the California*
20 *Constitution.*

21 ~~SECTION 1. Section 1343 of the Health and Safety Code is~~
22 ~~amended to read:~~

23 ~~1343. (a) This chapter shall apply to health care service plans~~
24 ~~and specialized health care service plan contracts as defined in~~
25 ~~subdivisions (f) and (o) of Section 1345.~~

26 ~~(b) The director may by the adoption of rules or the issuance of~~
27 ~~orders deemed necessary and appropriate in accordance with~~
28 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~
29 ~~3 of Title 2 of the Government Code, either unconditionally or~~
30 ~~upon specified terms and conditions or for specified periods,~~
31 ~~exempt from this chapter any class of persons or plan contracts if~~
32 ~~the director finds the action to be in the public interest and not~~
33 ~~detrimental to the protection of subscribers, enrollees, or persons~~
34 ~~regulated under this chapter, and that the regulation of the persons~~
35 ~~or plan contracts is not essential to the purposes of this chapter.~~

36 ~~(c) The director, upon request of the Director of Health Care~~
37 ~~Services, shall exempt from this chapter any county-operated pilot~~
38 ~~program contracting with the State Department of Health Care~~
39 ~~Services pursuant to Article 7 (commencing with Section 14490)~~
40 ~~of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions~~

Code. The director may exempt noncounty-operated pilot programs upon request of the Director of Health Care Services. Those exemptions may be subject to conditions the Director of Health Care Services deems appropriate.

(d) Upon the request of the Director of Mental Health, the director may exempt from this chapter any mental health plan contractor or any capitated rate contract under Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions Code. Those exemptions may be subject to conditions the Director of Mental Health deems appropriate.

(e) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A person who does all of the following:

(A) Promises to provide care for life or for more than one year in return for a transfer of consideration from, or on behalf of, a person 60 years of age or older.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569).

(C) Has obtained a certificate of authority from the State Department of Social Services.

(4) The Major Risk Medical Insurance Board when engaging in activities under Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code.

(5) The California Small Group Reinsurance Fund.

SEC. 2. Section 1344 of the Health and Safety Code is amended to read:

1344. (a) The director may from time to time adopt, amend, and rescind any rules, forms, and orders as are necessary to carry

1 out the provisions of this chapter, including rules governing
2 applications and reports, and defining any terms, whether or not
3 used in this chapter, insofar as the definitions are not inconsistent
4 with the provisions of this chapter. For the purpose of rules and
5 forms, the director may classify persons and matters within the
6 director's jurisdiction, and may prescribe different requirements
7 for different classes. The director may, in accordance with Chapter
8 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
9 Title 2 of the Government Code, waive any requirement of any
10 rule or form in situations where in the director's discretion the
11 requirement is not necessary in the public interest or for the
12 protection of the public, subscribers, enrollees, or persons or plans
13 subject to this chapter. The director may adopt rules consistent
14 with federal regulations and statutes to regulate health care
15 coverage supplementing Medicare.

16 (b) The director may honor requests from interested parties for
17 interpretive opinions.

18 (c) No provision of this chapter imposing any liability applies
19 to any act done or omitted in good faith in conformity with any
20 rule, form, order, or written interpretive opinion of the director or
21 of the Attorney General, notwithstanding that the rule, form, order,
22 or written interpretive opinion may later be amended or rescinded
23 or be determined by judicial or other authority to be invalid for
24 any reason.